

Letter of Findings: 04-20100680
Gross Retail Tax
For the Years 2007 through 2009

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ISSUE

I. Equipment Sales – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-3-7; IC § 6-2.5-5-2; IC § 6-2.5-5-2(a); IC § 6-2.5-5-2(b)(2); IC § 6-2.5-4-1(b); IC § 6-2.5-4-2(a); IC § 6-8.1-5-1(c); IC § 6-2.5-8-8(a); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629 (Ind. Tax Ct. 1999); Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282 (Ind. Tax Ct. 1999); Dep't of Revenue, State of Ind. v. Kimball Intern., Inc. 520 N.E.2d 454 (Ind. Ct. App. 1988).

Taxpayer argues that it was not required to collect sales tax when its customers purchased equipment purportedly used for agricultural purposes.

STATEMENT OF FACTS

Taxpayer sells used farm and utility vehicles along with certain related attachments and parts. The equipment is intended for agricultural, construction, and other utility purposes.

The Department of Revenue (Department) conducted a sales tax audit of Taxpayer's business records. The audit found that Taxpayer reported "zero taxable sales during the audit period."

The audit report indicated that Taxpayer had collected and retained a number of valid exemption certificates. The audit allowed an additional four months to gather additional exemption certificates from its customers. After those additional exemption certificates were acquired, the audit reclassified the corresponding purchases as "exempt." The audit classified as "exempt" purchases in which the equipment was delivered to or shipped outside Indiana. The audit also classified as "exempt" those transactions in which the Taxpayer accepted a "like-kind exchange" for the piece of equipment.

The audit report indicates that, "[T]axpayer was not able to collect an exemption certificate for each exempted sale during the audit report." As a result, the audit found that "[t]hese are taxable...."

The Department's audit resulted in the assessment of additional sales/use tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled in order to provide Taxpayer the opportunity to further explain the basis for its protest; Taxpayer declined the opportunity to take part in the hearing. This Letter of Findings is based upon the original audit report and Taxpayer's written protest.

I. Equipment Sales – Gross Retail Tax.

DISCUSSION

The audit assessed sales/use tax on those equipment transactions for which Taxpayer failed or was unable to provide a sales tax exemption certificate.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Pursuant to IC § 6-2.5-2-1, the state Gross Retail (sales) Tax is imposed on retail transactions made in Indiana unless a valid exemption is applicable. The imposition of Gross Retail Tax is triggered by the occurrence of a retail transaction in which a person, in the ordinary course of his business, acquires tangible personal property for the purpose of resale and transfers that property to another person for consideration. IC § 6-2.5-4-1(b).

There is no dispute that Taxpayer entered into "retail transactions" with its customers but Taxpayer argues that the transactions were exempt because the equipment was plainly used – or intended to be used – for agricultural purposes. Taxpayer does not specifically cite to any statutory authority, but Taxpayer apparently relies on IC § 6-2.5-5-2 which states in part as follows:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

(1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;

(2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity

production....

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Dep't of Revenue, *State of Ind. v. Kimball Intern., Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

IC § 6-2.5-5-2 like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999); 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999).

Taxpayer has provided photographs of certain of the equipment sold. For example, Taxpayer provided a picture of a "frame weight" and a John Deere 770 tractor. Written on each of the photographs, Taxpayer indicates that the equipment was "Agricultural Non-Taxable." Taxpayer's representative states that, "I find it very difficult to understand how someone working in Indiana, the heart of the corn belt, could have such a poor understanding of the agricultural use of the equipment. There is no other use."

In addition to its argument in which Taxpayer states that the equipment is intended for agricultural use, Taxpayer further states that, "The majority of the sales are to other wholesalers [and that] these would be non taxable even if the sale to another wholesaler would have been taxable to the general consumer."

Insofar as its argument that Taxpayer was acting as a "wholesaler," under IC § 6-2.5-4-2(a), a person making wholesale sales is a retail merchant. However, a wholesaler may accept from its customers properly executed exemption certificates in lieu of collecting sales tax on purchases provided the customers are registered as retail merchants and the purchases qualify for exemption. Therefore, as a wholesaler, Taxpayer is only authorized to make tax exempt wholesale sales to registered retail merchants who provide a properly executed exemption certificate. These are the same restrictions that apply to any taxpayer when it acts as a retail merchant.

The audit required Taxpayer to produce exemption certificates verifying that the transaction at issue was exempt. IC § 6-2.5-8-8(a).

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax.

The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

Nonetheless, Taxpayer argues that with or without an exemption certificate, the equipment was plainly intended for use in exempt agricultural purposes and/or that the Taxpayer was acting as a wholesaler when it sold the equipment.

Taxpayer misunderstands the exemption statutes. The question is not whether the equipment is or is not exempt. The issue is whether a particular transaction with a particular customer was exempt. IC § 6-2.5-5-2(a). For purposes of discussion, the Department freely concedes that it is entirely possible that the transaction in which the purchaser acquired a John Deere 770 tractor was exempt, but it is also possible that the transaction was not exempt. In order to qualify for the exemption, IC § 6-2.5-5-2 requires that the item be used to produce "food or food ingredients" for "human or animal consumption." If the John Deere tractor was used to cultivate a corn field, the tractor is being used in an exempt manner unless, of course, the corn was being produced for purposes other than "human or animal consumption." If the John Deere tractor is being used in a tree nursery operation, the tractor is being used in a non-exempt manner. If the John Deere tractor was purchased by an individual who is in the business of cultivating other persons' fields, the tractor is not exempt because the individual performing the service is not "occupationally engaged in the production of food or commodities." IC § 6-2.5-5-2(b)(2).

It is not the merchant's responsibility to determine whether or not a particular transaction is or is not exempt because retail transactions are subject to sales tax unless the purchaser establishes that an exemption is applicable. IC § 6-2.5-3-7. In this case, Taxpayer's customers failed to provide an exemption certificate as set out in IC § 6-2.5-8-8(a) and without documentation establishing that the customers claimed an exemption, it was Taxpayer's obligation to collect sales tax as an "agent for the state." IC § 6-2.5-2-1(b).

FINDING

Taxpayer's protest is respectfully denied.

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